



1936

A Struggle for the Law

M.A Hildreth

Follow this and additional works at: <https://commons.und.edu/ndlr>

Recommended Citation

Hildreth, M.A (1936) "A Struggle for the Law," *North Dakota Law Review*. Vol. 12 : No. 3 , Article 1.
Available at: <https://commons.und.edu/ndlr/vol12/iss3/1>

This Article is brought to you for free and open access by the School of Law at UND Scholarly Commons. It has been accepted for inclusion in North Dakota Law Review by an authorized editor of UND Scholarly Commons. For more information, please contact und.common@library.und.edu.

BAR BRIEFS

PUBLISHED MONTHLY AT BISMARCK

—By—

STATE BAR ASSOCIATION OF NORTH DAKOTA

B. F. Tillotson, Editor

Entered as Second Class Matter Jan. 15, 1925, at the Postoffice at Bismarck,
North Dakota, Under the Act of August 24, 1912

VOL. 12

FEBRUARY, 1936

No. 3

A STRUGGLE FOR THE LAW

All persons who go into a Court of Justice to establish their rights or to defend their rights, whether civil or criminal, want the law on their side. Since the dawn of history a contest to have the law on one's side has gone on.

The two forces of right and wrong are always looking and battling to get the law on their side. The good citizen who goes about his business and minds his own business has a sound belief that the law is on his side. The bad man who goes about *his* business in the criminal world, educates himself to believe that he can beat the law.

Great interests fight to get the law on their side. They want Courts, they want judges who go on the bench who will think as they think, and they oppose judges who disagree with their philosophy. It is hard to find judges who suit everybody. A good man does not fear a good judge, but a bad man not only fears a good judge but he fears the law.

The rich and powerful want the law on their side. They want the courts on their side. The poorer man loses faith in the courts just to that degree that he feels in his soul that they favor the great and the powerful. Law abiding people want judges not only to be learned but they want them to have a legal as well as a moral conscience. Judges have great powers. They can protect the weak and they can protect those who are not weak. They have a discretion in the administration of the law that is sublime, God fearing, because to the poor in distress it means justice.

But this discretion which courts have is sometimes very dangerous, and the feeling of many people that courts are

(Continued on next page)

unjust has grown out of the great fact that judges are just human beings. Jefferson said that judges are as honest as other people and no more so. A great writer, Lord Campbell, once said, "The discretion of a judge is the law of tyrants. It is always unknown; it is different in different men. It is casual and depends upon constitution, temper and passion. In the best it is oftentimes caprice. In the worst it is every vice, folly and passion to which human nature is possible. A judge must not only be learned in the law, but he must respect the law."

When courts strike down and disagree on what the law is, people lose respect for the law. When judges can not agree they create in the mind of the public a feeling of uncertainty. Majority rule prevails in our appellate courts, but oftentimes the minority approaches the standard of the common people. Therefore we have a struggle for the law. Each interest wants the law on its side, and as that struggle continues so will people doubt the administration of justice.

Injustice by courts weakens and destroys confidence in man made law. It is difficult therefore for the judge to measure out even handed justice. When legal rights are violated, the law itself is violated. When the personnel of a court strikes down law and by a majority vote says that the law is wrong, and the minority says that the law is right, the common man looks at the decision and finds comfort if his view is in line with the majority. But the man who believes in the minority not only believes that the majority was wrong, but that the minority was greatly in the right.

Therefore courts themselves divide their opinions in parts, and the people who love to turn to the courts for the administration of pure, unadulterated justice, are hungry not only for justice but are also hungry for men on the bench who have a conscience for the law and a feeling for mankind.

M. A. HILDRETH,

President.

DEATH OF JAMES A. MURPHY

WHEREAS Judge James A. Murphy, after a prolonged illness, passed away on January 14th, A. D. 1936, in view of the influence of his character, life and work upon the Stutsman County Bar Association, the Professional Association of the County in which he has made his residence for a period of more than forty years, we, the members of the Bar Association of Stutsman County in meeting assembled, have adopted and directed to be published the following Resolutions:

RESOLVED, That Judge Murphy was the Dean of the Stutsman County Bar Association. He came to the City of Jamestown in the year 1894 and has resided here continuously since that time. During that period he has been for many years a Justice of the Peace for Stutsman County and later Judge of the County Court with increased jurisdiction for a period of more than seven years. In all of the offices which he held, his service was most satisfactory, both to the Bar and to the People. He was at all times courteous and prompt in the discharge of duty, effectual in his service and prompt in his performance of all duties, official or personal that devolved upon him. As a member of this Bar Association, he acted for a number of years most effectually as Secretary, and finally withdrew from that office only on account of declining health.

AND BE IT FURTHER RESOLVED that the influence, work and character of Judge Murphy in his strict, impartial and effectual dis-